

November 22, 2013

via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

**Re: Ex Parte filing of Shenandoah Cable Television, LLC ("Shentel");
Connect America Fund, Phase I Round 2 ("CAF");
WC Docket No. 10-90**

Dear Mrs. Dortch:

Shentel submits this filing to briefly respond to arguments raised by CenturyLink in its response¹ to our letter² challenging several census blocks for which CenturyLink seeks CAF support.

Background.

CenturyLink seeks CAF support for 27 census blocks in which Shentel offers fixed internet access with speeds well in excess of the 3 Mbps/768 kbps threshold.³ In our Challenge Letter, we submitted multiple forms of documented evidence to support our challenge to those blocks' eligibility for CAF support, including a list of the challenged blocks together with an officer's certification, customer bills to show that we offer service in each block, and maps showing that our coverage area overlaps with the challenged blocks.

In its response, CenturyLink seizes upon our omission of customer bills for four of the 27 census blocks and notes that our maps reflect "only partial coverage" of some blocks.⁴ CenturyLink then jumps to the conclusion that "Shentel's mapped coverage areas that reflect only partial coverage in a census block, in conjunction with its failure to provide customer bills for the four census blocks identified above should not preclude CenturyLink's ability to use CAF support to deploy broadband to locations in these census blocks generally, and in at least the four census blocks without customer bills in particular."⁵

Below, we briefly respond to these arguments.

¹ CenturyLink Responses to CAF I Round 2 Challenges, WC Docket No. 10-90, p.22 (Nov. 4, 2013) ("CenturyLink Response").

² Shenandoah Cable Television, LLC Challenge to CenturyLink Elections for 27 Census Blocks in Virginia, from Raymond B. Ostroski, Vice President and General Counsel, Shenandoah Cable Television, LLC, WC Docket No. 10-90 (Sept. 26, 2013) ("Challenge Letter").

³ Challenge Letter, p.2 and exhibits.

⁴ CenturyLink Response at p.22.

⁵ *Id.*

CenturyLink should be precluded from using CAF support in the four census blocks with missing customer bills because we provided other documented evidence to show that we offer service in those blocks.

In compiling the documented evidence for our Challenge Letter, we omitted customer bills for four of the 27 challenged blocks.⁶ CenturyLink's argument that the missing bills "should not preclude [its] ability to use CAF support" in these blocks ignores the fact that we provided other documented evidence to show that we offer broadband in those blocks. Indeed, we provided maps and an officer's certification, both showing that we offer service in those blocks.⁷

CenturyLink should be precluded from using CAF support in census blocks that Shentel's maps show that it partially covers.

The Commission considered—and rejected—the idea of allowing partial challenges to census blocks, concluding, "it is not administratively feasible to allow partial census block challenges."⁸ Indeed, CenturyLink should be aware of this—it was one of the parties who urged the Commission to consider partial block challenges.⁹

Moreover, providing CAF support to CenturyLink in census blocks where Shentel already offers broadband would undercut the Commission's goals for the CAF program¹⁰ and undermine the challenge process.

In any event, if the bureau decides to provide CAF support to CenturyLink in the census blocks that Shentel partially covers, it should at least prohibit CenturyLink from deploying to locations in Shentel's coverage area.

⁶ The FIPS codes for those four blocks are 510310201022019, 510670207003052, 511119303002039, and 511970503022034.

⁷ Challenge Letter, Exhibits B, C (see maps on pp. 98, 100, 101, 108, 109 for the four census blocks at issue).

⁸ *In the Matter of Connect America Fund*, Report and Order, 28 FCC Rcd 7766 ¶ 31, n.63 (rel. May 22, 2013).

⁹ *Id.* (noting that some parties "argued that partial census block challenges should be considered" and citing, as an example, a letter from CenturyLink's Senior Vice President for Federal Policy and Regulatory Affairs).

¹⁰ See *id.* at ¶ 28 (concluding that the challenge process will "improve the accuracy and efficacy of a second round of Phase I support, allowing support to be appropriately targeted to unserved areas consistent with [the Commission's] overarching goals for Phase I."); see also, *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 20 (2011) ("The CAF will help make broadband available to homes, businesses, and community anchor institutions that do not, or would not otherwise, have broadband ... [and] will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible.").

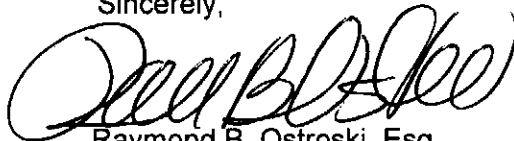
The bureau should accept this *ex parte* filing as a matter of law, policy, and equity.

Several price cap carriers recently met with Amy Bender and Ryan Yates of the Wireline Competition Bureau, urging the "Commission not to consider any evidence submitted by a participant in the challenge process after the deadlines."¹¹ The American Cable Association ("ACA") responded, arguing that as a matter of law, policy, and equity, the Commission should consider information that can improve the accuracy of the record.¹² A copy of ACA's filing is attached to this letter.

For the reasons cited by ACA, the bureau should consider the information provided in this filing as it evaluates the eligibility of the blocks that Shentel challenged.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray B. Ostroski".

Raymond B. Ostroski, Esq.
Vice President and General Counsel

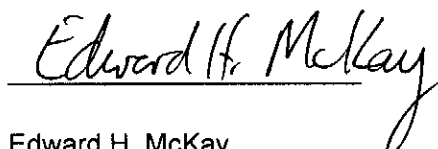
cc: Amy Bender
Ryan Yates

¹¹ *Notice of Ex Parte*, from Michael D. Saperstein, Jr., Vice President, Federal Regulatory Affairs, Frontier Communications, WC Docket No. 10-90, (Nov. 14, 2013) (filed on behalf of Frontier, AT&T, CenturyLink, FairPoint, and Windstream).

¹² *Notice of Ex Parte*, from Thomas Cohen, Counsel for the American Cable Association, WC Docket No. 10-90 (Nov. 15, 2013).

Exhibit A
Officer's Certification

1. My name is Edward H. McKay, and I am Vice President of Wireline and Engineering of Shentel. I certify as follows.
2. Shentel offers fixed Internet access with speeds of 3 Mbps/768 kbps to customers in the following census blocks: 510310201022019, 510670207003052, 511119303002039, and 511970503022034.
3. I certify under penalty of perjury that the facts contained in this Officer's Certification and in the challenge letter are true and correct to the best of my knowledge, information, and belief.



Edward H. McKay
Vice President of Wireline and Engineering

November 22, 2013

Attachment
ACA *Ex Parte* Filing

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November 15, 2013

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Filing by the American Cable Association (ACA) on Connect America Fund; WC Docket No. 10-90

Dear Ms. Dortch:

On November 12, 2013, a group of price cap local exchange carriers (LECs) met with Amy Bender and Ryan Yates of the Wireline Competition Bureau (Bureau) to discuss the Connect America Fund (CAF) Phase I Round 2 challenge process.¹ In the *ex parte* notice filed describing this meeting, the price cap LECs state that they “urge the Commission not to consider any evidence submitted by a participant in the challenge process after the deadlines.”² They claim that “the Commission did not allow for the submission of, nor should it consider, further information provided by participants after those deadlines.”³ ACA respectfully submits that the assertions of the price cap LECs are wrong as a matter of law, policy, and equity. They also run counter to US Telecom’s recent statement that “A fair, thorough and accurate challenge process is key to efficiently and effectively using CAF I monies.”⁴

¹ See *Notice of Ex Parte* from Michael E. Saperstein, Jr., Vice President, Federal Regulatory Affairs, Frontier Communications (on behalf of AT&T, CenturyLink, Fairpoint, Frontier, and Windstream), WC Docket No. 10-90 (Nov. 14, 2013) (“Price Cap LEC Ex Parte”).

² *Id.*

³ *Id.*

⁴ *Notice of Ex Parte* from David B. Cohen, Vice-President, Policy, US Telecom, WC Docket No. 10-90 at 1 (Oct. 31, 2103).

Marlene H. Dortch
November 15, 2013
Page Two

First, as a matter of law, nowhere in the *CAF Phase I Round 2 Order* providing for Phase I Round 2 incremental support does the Commission, in setting forth the challenge process, prohibit or otherwise limit the submission of additional evidence after the filing of initial challenges and replies to those challenges.⁵ This is consistent with the Commission's statutory responsibilities to receive information to forward its public interest responsibilities.⁶ Moreover, the Commission's decision not to prohibit the submission of post-comment information in the Phase I Round 2 challenge process stands in stark contrast to the Bureau's explicit decision in the *CAF Phase II Order* to not consider post-comment submissions:

The Bureau does not intend to consider evidence or arguments related to the eligibility of a block for Phase II support unless that evidence or argument is raised within the specified time period for filing challenges and responses.⁷

This clearly demonstrates the Commission and Bureau know how to bar or limit consideration of submissions when they wish.

Second, as a matter of policy, the Commission should collect such information. Getting the facts correct about where an unsubsidized competitor provides service ensures that limited CAF support will not be expended where the requisite broadband service is already being offered. It also furthers the Commission's policy to encourage providers to use their own funds to deploy broadband across the country. Not only does collection of additional information have significant benefits, it should have no material adverse affect on deployments of broadband to unserved locations since the Commission is eager to complete the challenge process promptly and the deployments are to occur over a lengthy (three year) schedule.

Third, as a matter of equity, the Commission should permit competitors to submit additional facts. The Commission's directives in the *CAF Phase I Round 2 Order* about the type of information that should be submitted are limited and at best imprecise.⁸ Additionally, challengers did not have the benefit of prior experience since this is the first instance in which the Commission operated a formal challenge process. Consequently, there were uncertainties as to the extent of information that should

⁵ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 13-73, ¶ 32 (rel. May 22, 2013) ("*CAF Phase I Round 2 Order*"). The rules adopted pursuant to this Report and Order also do not prohibit or limit the filing of information (47 C.F.R. § 54.312(c)(7)). The references in the Price Cap LEC Ex Parte to the Phase II challenge process are inapt.

⁶ See, e.g., Section 154(j) of the Communications Act of 1934, as amended (47 U.S.C. § 154(j)).

⁷ See *Connect America Fund*, WC Docket No. 10-90, Report and Order, FCC 13-1113, ¶ 21, n. 47 (rel. May 16, 2013) ("*CAF Phase II Order*").

⁸ See *id.*, ¶ 33.

KELLEY DRYE & WARREN LLP

Marlene H. Dortch
November 15, 2013
Page Three

be provided,⁹ and challengers should be given an opportunity, within reason, to supply information that can make the record more accurate.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



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Counsel for the American Cable Association

cc: Amy Bender
Ryan Yates

⁹ ACA and the National Cable & Telecommunications Association discussed some of these uncertainties with the Bureau on August 28, 2013. *See Notice of Ex Parte* from Thomas Cohen, Counsel for the American Cable Association, WC Docket No. 10-90 (Aug. 30, 2103).